



Control Number: 46043



Item Number: 2

Addendum StartPage: 0

RECEIVED

COMPLAINT AND PETITION FOR §  
ENFORCEMENT OF FINAL ORDER §  
REGARDING CITY OF AUSTIN §  
WHOLESALE RATES §

2016 JUN 24 AM 9:06  
BEFORE THE  
PUBLIC UTILITY COMMISSION  
FILING CLERK OF TEXAS

## ORIGINAL ANSWER OF CITY OF AUSTIN

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The City of Austin ("City") submits the following answer to the Complaint Regarding City of Austin Wholesale Rates filed by Complainants North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District (the "Complaint").

Complainants filed the Complaint on June 7, 2016, requesting that the Public Utility Commission ("PUC") find that the City is failing to comply with the PUC's order in Docket 42857, setting the Complainants' wholesale water and wastewater rates. As explained below in section IV, this proceeding is premature and the PUC should dismiss it. At a minimum, the PUC should stay the action.

### I. PARTIES

- 1.1. The City admits the allegations in Paragraph 1.1.
- 1.2. The City admits the allegations in Paragraph 1.2.

### II. JURISDICTION

- 2.1. The City admits that the Complainants have purported to file the Complaint pursuant to Tex. Water Code §§ 13.411 and 13.044 and 16 TAC §§ 22.242 and 24.45. The City denies the remainder of the allegations in Paragraph 2.1 and specifically asserts that the

City is complying with the terms of the PUC's January 14, 2016 Order entered in Docket No. 42857 ("Docket 42857 Final Order").

2.2. Paragraph 2.2 states what relief the Complainants are seeking from PUC and requires neither an admission nor a denial. To the extent a response is required, the City denies all factual allegations contained therein.

2.3. Paragraph 2.3 purports to be a summary of Tex. Water Code §13.044. Tex. Water Code §13.044 speaks for itself and to the extent that anything in Paragraph 2.3 contradicts the statute, the allegations are denied.

2.4. The second Paragraph 2.3 purports to be a summary of 16 TAC 22.242 and 24.45. These regulations speak for themselves and to the extent that anything the second Paragraph 2.3 contradicts the regulations, the allegations are denied.

2.5. Paragraph 2.4 purports to be a summary of 16 TAC §22.242(c)(2). 16 TAC §22.242(c)(2) speaks for itself and to the extent that anything in Paragraph 2.4 contradicts the regulation, the allegations are denied.

2.6. Paragraph 2.7 [sic] purports to be a summary of Tex. Water Code §13.411(a). Tex. Water Code §13.411(a) speaks for itself and to the extent that anything in Paragraph 2.7 contradicts the statute, the allegations are denied.

### III. FACTS

3.1. The City admits the allegations in Paragraph 3.1.

3.2. The City admits the allegations in Paragraph 3.2.

3.3. The City admits the allegations in Paragraph 3.3.

3.4. The City admits the allegations in Paragraph 3.4.

3.5. The City does not have sufficient information to admit or deny the allegations set forth in Paragraph 3.5.

3.6. The City admits that pursuant to the terms of the applicable contracts, the Austin City Council sets Complainants' rates annually by passing an ordinance which sets rates for all wholesale water customers. The City denies any implication that this process somehow invalidates the contracts or negates the existence of a contract in the first place.

3.7. The City admits the allegations in Paragraph 3.7.

3.8. The City admits the allegations in Paragraph 3.8.

3.9. The City admits the allegations in Paragraph 3.9. The City has appealed the Docket 42857 Final Order. The appeal is currently pending in Travis County District Court.

3.10. The City admits that the Docket 42857 Final Order requires the City not to increase Complainants' water or wastewater rates. The City denies any implication that the City has violated this requirement.

3.11. In the second 3.10 paragraph, Complainants assert that the City began charging a new increased rate to Complainants. The City denies the allegations set forth in the second Paragraph 3.10.

3.12. The City admits that prior to the issuance of the Docket 42857 Final Order, the City did not separately measure and bill for inflow and infiltration (I&I). Instead, the City incorporated the costs associated with I&I in its base rates. The City admits that the Complainants' bills from April 2013 would not indicate a separate charge for I&I. The City denies the remainder of the allegations in Paragraph 3.11.

3.13. The City denies the allegations in Paragraph 3.12.

3.14. The City admits that it has filed no application with the PUC but denies that any application was necessary. The City denies the remainder of the allegations in Paragraph 3.13

3.15. The City admits the allegations in Paragraph 3.14.

#### IV. AFFIRMATIVE DEFENSES

1. This action is premature as Complainants have articulated the same concerns expressed in their Complaint in Docket No. 45240, the City of Austin's Proof of Refunds in Compliance with Docket No. 42857.

2. In Docket No. 45240, Complainants and the City have presented the PUC with competing interpretations of the PUC's rate calculations in the Docket 42857 Final Order.

3. On June 15, 2016, in Order No. 4, Ms. Irene Montelongo, Director of Docket Management, instructed Commission Staff to "confirm whether the City has properly calculated the refunds to each [Complainant] for the applicable period. If the refund calculations are incorrect, Commission Staff shall indicate the correct refund amount."

4. The PUC Commission Staff has until June 28, 2016 to perform these calculations.

5. Until the Commission Staff complies with Order No. 4 and the PUC issues its own order addressing the concerns raised in Docket No. 45240, any enforcement action is premature and should be stayed or dismissed.

#### V. PRAYER

WHEREFORE, having fully answered, the City prays that the Complainants take nothing by this action and for judgement from the PUC denying all relief requested by the Complainants.

The City further prays for all costs of court and for such other relief to which it may be entitled,  
both in law and in equity.

Respectfully submitted,



**Anne L. Morgan,**

City Attorney

**Meghan Riley,**

Litigation Division Chief

**Andrea D. Rose,**

Assistant City Attorney

State Bar No. 24081615

**D. Clark Cornwell,**

Assistant City Attorney

City of Austin Law Department

P.O. Box 1088

Austin, TX 78767-1088

**ATTORNEYS FOR THE CITY OF  
AUSTIN**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served  
via email on all parties whose names appear on the mailing list below on June 24, 2016.

Randall B. Wilburn

3000 South IH 35, Suite 150

Austin, Texas 78704

Phone: 512-535-1661

Fax: 512-535-1678

[rbw@randallwilburnlaw.com](mailto:rbw@randallwilburnlaw.com)

John Carlton

The Carlton Law Firm, P.L.L.C.

2705 Bee Cave Road, Suite 200

Austin, Texas 78746

Phone: 512-614-0901

Fax: 512-900-2855

[john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)

**COUNSEL FOR COMPLAINANTS**